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BEFORE THE
PHYSICIAN ASSISTANT EXAMINING COMMITTEE
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation)

Against:)

EARLE VANCORTLANDT CORE, III)
856 Jordan Avenue)
Los Altos, California 94022)
Physician Assistant License)
No. PA-12438)

Respondent.)

No. D-5078

ACCUSATION

RAY E. DALE, complainant herein, charges and alleges as follows:

1. He is the Executive Officer of the Physician Assistant Examining Committee, Medical Board of California, State of California (hereinafter "the Committee") and makes and files this Accusation solely in his official capacity.

2. At all times material herein, respondent Earle Vancortlandt Core, III (hereinafter "respondent") has held physician assistant license No. PA-12438 which was issued to him by the Committee on February 5, 1990 and will expire, unless renewed, on April 30, 1993.

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4. Section 2220 provides, in pertinent part, that the Division of Medical Quality of the Medical Board of California (hereinafter "the Division") may take action against all persons guilty of violating the provisions of the Medical Practice Act (Business and Professions Code § 2000 et seq.).

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

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"[N]otwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board

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1 when such services are rendered under the supervision
2 of a licensed physician or physicians approved by the
3 board."

4 7. Section 3510 provides that:

5 "[T]he committee may adopt, amend, and repeal
6 regulations as may be necessary to enable it to carry
7 into effect the provisions of this chapter; provided,
8 however, that the board shall adopt, amend, and repeal
9 such regulations as may be necessary to enable it to
10 implement the provisions of this chapter under its
11 jurisdiction. All regulations shall be in accordance
12 with, and not inconsistent with, the provisions of this
13 chapter. Such regulations shall be adopted, amended,
14 or repealed in accordance with the provisions of
15 Chapter 3.5 (commencing with Section 11340) of Part 1
16 of Division 3 of Title 2 of the Government Code."

17 8. Sections 3527(c) and (d) provide that:

18 "(a) The committee may order the denial of an
19 application for, or the issuance subject to terms and
20 conditions of, or the suspension or revocation of, or
21 the imposition of probationary conditions upon a
22 physician's assistant license after a hearing as
23 required in Section 3528 for unprofessional conduct
24 which includes, but is not limited to, a violation of
25 this chapter, a violation of the State Medical Practice
26 Act, or a violation of the regulations adopted by the
27 committee or the board.

"(c) The board may order the denial of an
application for, or the issuance subject to terms and
conditions of, or the suspension or revocation of, or
the imposition of probationary conditions upon, an
approval to supervise a physician's assistant, after a
hearing as required in Section 3528, for unprofessional
conduct, which includes, but is not limited to, a
violation of this chapter, a violation of the Medical
Practice Act, or a violation of the regulations adopted
by the committee or the board.

"(d) Notwithstanding subdivision (c), the Division
of Medical Quality of the Medical Board of California,
in conjunction with an action it has commenced against
a physician and surgeon, may, in its own discretion and
without the concurrence of the board, order the
suspension or revocation of, or the imposition of
probationary conditions upon, an approval to supervise
a physician's assistant, after a hearing as required in
Section 3528, for unprofessional conduct, which

1 includes, but is not limited to, a violation of this
2 chapter, a violation of the Medical Practice Act, or a
3 violation of the regulations adopted by the committee
4 or the board."

5 9. Title 16, California Code of Regulations, section
6 1399.522 and subsection (c) therein provide that:

7 "In addition to the grounds set forth in Section
8 3527, subd. (c), of the code, the board may deny, issue
9 subject to terms and conditions, suspend, revoke or
10 place on probation an approval to supervise a
11 physician's assistant for the following causes:

12 . . .
13 "(c) The physician's assistant supervised has
14 rendered medical services not authorized by these
15 regulations regardless of whether the supervising
16 physician has knowledge of the acts performed."

17 10. Title 16, California Code of Regulations section
18 1399.540 states that:

19 "A physician assistant may only provide those
20 medical services which he or she is competent to
21 perform and which are consistent with the physician
22 assistant's education, training, and experience, and
23 which are delegated in writing by a supervising
24 physician who is responsible for the patients cared for
25 by that physician assistant. The committee or division
26 or their representative may require proof or
27 demonstration of competence from any physician
assistant for any tasks, procedures or management he or
she is performing. A physician assistant shall consult
with a physician regarding any task, procedure or
diagnostic problem which the physician assistant
determines exceeds his or her level of competence or
shall refer such cases to a physician."

11. Title 16, California Code of Regulations section
1399.541 provides that:

"A physician assistant may:

"(a) Take an appropriate history; perform an
appropriate physical examination and make an assessment
therefrom, and record and present pertinent data in a
manner meaningful to the physician.

"(b) Perform and/or assist in the performance of

laboratory and screening procedures delegated by the supervising physician where the procedures to be performed are consistent with the physician's specialty or usual and customary practice, and with the patient's health and condition.

"(c) Perform or assist in the performance of therapeutic procedures delegated by the supervising physician where the procedures to be performed are consistent with the physician's specialty or usual and customary practice, and with the patient's health and condition.

"(d) Recognize and evaluate situations which call for immediate attention of the physician and institute, when necessary, treatment procedures essential for the life of the patient.

"(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health, such as diets, social habits, family planning, normal growth and development, aging, and understanding of and long term management of their disease.

"(f) Assist the physician in the practice setting (including health facilities as defined in Section 1250 of the Health and Safety Code) by arranging admissions, by taking complete histories and performing physical examinations, by completing forms and charts pertinent to the patient's medical record, by providing services to patients requiring continuing care, including patients at home. This assistance also includes the review of treatment and therapy plans, the ordering of diagnostic laboratory tests and procedures and diagnostic radiological services which are usual and customary to the supervising physician's practice, the ordering of therapeutic diets, physical therapy treatments, occupational therapy treatments and respiratory care services, and by evaluating patients and performing the procedures and tasks specified in subsections (a), (b), and (c) above and acting as first or second assistant in surgery under the supervision of an approved supervising physician.

"(g) Facilitate the physician's referral of patients to the appropriate health facilities, agencies, and resources of the community.

"(h) Administer medication to a patient, or transmit orally, or in writing on a patient's record, a prescription from his or her supervising physician to a person who may lawfully furnish such medication or medical device. The supervising physician's prescription, transmitted by the physician assistant,

1 for any patient cared for by the physician assistant,
2 shall be based either on a patient-specific order by
3 the supervising physician or on written protocol which
4 specifies all criteria for the use of a specific drug
5 or device and any contraindications for the selection.
6 A physician assistant shall not provide a drug or
7 transmit a prescription for a drug other than that drug
8 specified in the protocol, without a patient-specific
9 order from a supervising physician. At the direction
10 and under the supervision of a physician supervisor, a
11 physician assistant may hand to a patient of the
12 supervising physician a properly labeled prescription
13 drug prepackaged by a physician, a manufacturer, as
14 defined in the Pharmacy Law, or a pharmacist. In any
15 case, the medical record of any patient cared for by
16 the physician assistant for whom the physician's
17 prescription has been transmitted or carried out shall
18 be reviewed and countersigned and dated by a
19 supervising physician within seven (7) days. A
20 physician assistant may not administer, provide or
21 transmit a prescription for controlled substances in
22 Schedules II through V inclusive without
23 patient-specific authority by a supervising physician."

13 12. Title 16, California Code of Regulations section
14 1399.542 provides that:

15 "The delegation of procedures to a physician assistant
16 under Section 1399.541, subsections (b) and (c) shall
17 not relieve the supervising physician of primary
18 continued responsibility for the welfare of the
19 patient."

20 13. Title 16, California Code of Regulations section
21 1399.545 that:

22 "(a) A supervising physician shall be available
23 in person or by electronic communication at all times
24 when the physician assistant is caring for patients.

25 "(b) A supervising physician shall delegate to
26 a physician assistant only those tasks and procedures
27 consistent with the supervising physician's specialty
or usual and customary practice and with the patient's
health and condition.

"(c) A supervising physician shall observe or
review evidence of the physician assistant's
performance of all tasks and procedures to be delegated
to the physician assistant until assured of competency.

"(d) The physician assistant and the supervising

1 physician shall establish in writing transport and
2 back-up procedures for the immediate care of patients
3 who are in need of emergency care beyond the physician
assistant's scope of practice for such times when a
supervising physician is not on the premises.

4 "(e) A physician assistant and his or her supervising
5 physician shall establish in writing guidelines for the
adequate supervision of the physician assistant which
6 shall include one or more of the following mechanisms:

7 "(1) Examination of the patient by a supervising
8 physician the same day as care is given by the
physician assistant;

9 "(2) Countersignature and dating of all medical
10 records written by the physician assistant within
thirty (30) days that the care was given by the
physician assistant;

11 "(3) The supervising physician may adopt protocols
12 to govern the performance of a physician assistant for
some or all tasks. The minimum content for a protocol
13 as referred to in this section shall include the
presence or absence of symptoms, signs, and other data
14 necessary to establish a diagnosis or assessment any
appropriate tests or studies to order, drugs to
15 recommend to the patient, and education to be given the
patient. For protocols governing procedures, the
16 protocol shall state the information to be given the
patient, the nature of the consent to be obtained from
17 the patient, the preparation and technique of the
procedure, and the follow-up care. Protocols shall be
18 developed by the physician or adopted from texts or
other sources. Protocols shall be signed and dated by
19 the supervising physician and the physician assistant.
The supervising physician shall review, countersign,
20 and date a minimum of 10% sample of medical records of
patients treated by the physician assistant functioning
21 under these protocols within thirty (30) days. The
physician shall select for review those cases which by
22 diagnosis, problem, treatment or procedure represent,
in his or her judgment, the most significant risk to
the patient;

23 "(4) Other mechanisms approved in advance by
24 the committee."

25 "(f) In the case of a physician assistant operating
26 under interim approval, the supervising physician shall
review, sign and date the medical record of all
27 patients cared for by that physician assistant within
seven (7) days if the physician was on the premises
when the physician assistant diagnosed or treated the

1 patient. If the physician was not on the premises at
2 that time, he or she shall review, sign and date such
3 medical records within 48 hours of the time the medical
4 services were provided.

5 "(g) Except in a life-threatening situation, a
6 physician assistant shall perform surgery requiring
7 other than a local anesthesia only under the direct and
8 immediate supervision of an approved physician.

9 "(h) The supervising physician has continuing
10 responsibility to follow the progress of the patient
11 and to make sure that the physician assistant does not
12 function autonomously. The supervising physician shall
13 be responsible for all medical services provided by a
14 physician assistant under his or her supervision."

15 FIRST CAUSES FOR DISCIPLINARY ACTION
16 (Patient Emily M.²¹)

17 14. On or about January 5, 1989 and continuing until
18 on or about January 16, 1989, respondent undertook the care and
19 treatment of Emily M., a 15 year old girl who complained of
20 dizziness, nausea, fatigue and possible low blood pressure
21 following an automobile accident approximately seven weeks
22 earlier.

23 15. On the first visit, January 5, 1989, relying on a
24 questionnaire compiled by patient Emily M., respondent diagnosed
25 PMS, hypoglycemia, candidiasis, hyperthyroidism and
26 malabsorption.

27 16. On said first visit respondent ordered the
following tests:

Achilles Tendon Reflex

Glucose Tolerance 6 hour

Heavy Metal Screen

2. Full names of patients alleged in this accusation will
be provided upon a request for discovery.

1 Heidelberg pH
2 93 Food Allergy
3 Comprehensive Stool Exam
4 CBC
5 Chem Panel
6 T3, T4, Tsh
7 Candida Antibodies
8 Thyroid Antibodies

9 17. On or about January 6, 1989, respondent ordered a
10 Gastric Acid Study wherein a radio transmitter contained in a
11 tiny capsule was swallowed by patient Emily M. to be processed
12 and eliminated in the stool through regular bowel movement. A
13 large band, similar to an x-ray vest, was placed around her
14 abdominal area and levels of stomach acidity were plotted on a
15 graph. Respondent informed Emily that she "flunked" the test
16 because her pH was at 8 pH and it should have been at 2 pH on the
17 graph, indicating her hydrochloric acid level to be too low.
18 Respondent also stated that she was not producing enough stomach
19 acid and dispensed Betaine HCl to be taken 2 to 3 capsules per
20 meal and 2 capsules with snacks for a total of approximately 15
21 capsules per day.

22 18. On or about January 9, 1989, respondent saw
23 patient Emily M. again and diagnosed tonsillitis, upper
24 respiratory infection and otitis media, stating that it was so
25 severe that there was barely enough room for her to breathe
26 through the small opening in her throat or nose.

27 19. On said visit respondent ordered the

1 administration of an IV injection of Vitamin A and an injection
2 of immune serum globulin. Respondent also dispensed Bee
3 Propolis, Atri garlic and Zinc Plus C lozenges.

4 20. On or about January 11, 1989 respondent again saw
5 patient Emily M..

6 21. On said visit respondent ordered the following
7 tests: glucose tolerance test, hypothyroid profile (HSP2), anti-
8 candida, achilles tendon reflex and 93 antigens: allergy test.

9 22. On or about January 16, 1989, due to Emily's
10 worsening condition, including temperature fluctuations, extreme
11 heartburn, nausea and inability to keep food down, her mother
12 Dolores M. telephoned respondent's supervising physician, Claude
13 Marquette, M.D., approximately nine times. Dr. Marquette did not
14 return any of these telephone calls.

15 23. No adequate and/or any physical examination was
16 ever conducted.

17 24. Notwithstanding requests by patient Emily M.s',
18 mother, Dolores M., Emily was never seen by respondent's
19 supervising physician, Claude Marquette, M.D.

20 25. Respondent (1) diagnosed and treated patient Emily
21 M. without performing an adequate and/or any physical
22 examination, and/or (2) failed to perform an adequate and/or any
23 physical examination, and/or (3) diagnosed and treated her for
24 conditions not supported by the test results or for which no
25 tests were performed, and/or (4) failed to properly treat her for
26 his diagnosis of upper respiratory infection, tonsillitis, and/or
27 otitis media, and/or (5) diagnosed and treated Emily M. without

1 having written guidelines and/or protocols regarding his
2 supervision and/or care and treatment of Emily M..

3 26. Respondent's conduct as alleged in paragraphs 14-
4 25 constitutes general unprofessional conduct and/or gross
5 negligence and/or repeated acts of negligence and/or incompetence
6 and/or acts of dishonesty or corruption and therefore is cause
7 for disciplinary action pursuant to sections 3527(c), 2234,
8 and/or 2234(b), and/or 2234(c), and/or 2234(d) and/or 2234(e).

9 SECOND CAUSES FOR DISCIPLINARY ACTION
10 (Patient Emily M.)

11 27. The allegations of paragraphs 14-25 are
12 incorporated herein by reference as if fully set forth.

13 28. Respondent did not have written guidelines and/or
14 protocols regarding his supervision and/or the care and treatment
15 he rendered to Emily M..

16 29. Respondent's conduct as alleged in paragraphs 27-
17 28 constitutes a failure to follow the statutes and regulations
18 applicable to physician's assistants and therefore is cause for
19 disciplinary action pursuant to section 3527(c) and (d), 3502 and
20 Title 16, California Code of Regulations sections 1399.522(c),
21 1399.540, 1399.541, 1399.542 and 1399.545(e) and (h).

22 THIRD CAUSES FOR DISCIPLINARY ACTION
23 (Patient Judith M.)

24 30. On or about November 14, 1990, respondent saw
25 patient Judith M. who had complained earlier of loss of control
26 of the left side of her body over a period of eight months, foot
27 drop, weight gain and stomach bloating.

1 31. Respondent did not take a history during said
2 appointment nor was an adequate and/or any physical examination
3 performed or previously performed.

4 32. On said appointment, respondent prescribed total
5 formula, iron plus, folic acid, betacarotene and B12.

6 33. On or about January, 1991, patient Judith M. was
7 diagnosed by other physicians whom she consulted as having a
8 brain tumor. Two months later, on March 15, 1991, she died of
9 complications following surgery for said brain tumor.

10 34. Respondent (1) diagnosed and treated patient
11 Judith M. without having or performing an adequate and/or any
12 physical examination, and/or (2) failed to perform an adequate
13 and/or any physical examination, and/or (3) diagnosed and treated
14 her for conditions not supported by the test results or for which
15 no tests were performed, and/or (4) diagnosed and treated Judith
16 M. without having written guidelines and/or protocols regarding
17 his supervision and/or care and treatment of Judith M., and/or
18 (5) failed to properly follow up on her complaint regarding the
19 loss of control of the left side of her body, including foot
20 drop.

21 35. Respondent's conduct as alleged in paragraphs 30-
22 32 and 34 constitutes general unprofessional conduct and/or gross
23 negligence and/or repeated acts of negligence and/or incompetence
24 and/or acts of dishonesty or corruption and therefore is cause
25 for disciplinary action pursuant to sections 3527(c), 2234,
26 and/or 2234(b), and/or 2234(c), and/or 2234(d) and/or 2234(e).

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FOURTH CAUSES FOR DISCIPLINARY ACTION
(Patient Judith M.)

36. The allegations of paragraphs 30-32 and 34 are incorporated herein by reference as if fully set forth.

37. Respondent did not have written guidelines and/or protocols regarding his supervision and/or the care and treatment he rendered to Judith M..

38. Respondent's conduct as alleged in paragraphs 36-37 constitutes a failure to follow the statutes and regulations applicable to physician's assistants and therefore is cause for disciplinary action pursuant to section 3527(c) and (d), 3502 and Title 16, California Code of Regulations sections 1399.522(c), 1399.540, 1399.541, 1399.542 and 1399.545(e) and (h).

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1 WHEREFORE, complainant prays that the Physician
2 Assistant Examining Committee hold a hearing on matters alleged
3 herein and, following said hearing, issue a decision:

4 1. Suspending or revoking respondent's physician
5 assistant License No. PA-12438 issued to Earle Vancortlandt Core,
6 III.

7 2. Taking such other and further action as the
8 Committee deems necessary and proper.

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10 DATED: January 19, 1993

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12 
13 RAY E. DALE
14 Executive Officer
15 Physician Assistant Examining
16 Committee
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California

20 Complainant

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18 File No. 1E 92 15874